

COVID-19 BULLETIN #4: NEW DEVELOPMENTS

RELEASE DATE MARCH 25, 2020

The purpose of this information bulletin is to provide additional COVID-19 information related to new provincial and federal government legislative developments to employers and may be of significance to employers operating in British Columbia and elsewhere.

AS OF MARCH 25, 2020:

*This bulletin is current to the morning of **March 25, 2020**. Please note that while we continue to monitor the situation, the circumstances remain very fluid as legislative and government rules and policies are ever changing. The responses of federal and provincial governments will continue to evolve, and this may impact the accuracy of the information in this bulletin and any information is subject to revision with the introduction of new or additional government guidelines.*

BRITISH COLUMBIA

CHANGES TO THE B.C. EMPLOYMENT STANDARDS ACT: EMERGENCY AMENDMENTS RESULT IN TWO NEW PROTECTED LEAVES OF ABSENCES FOR EMPLOYEES IN BC

COVID-19 Related Leave

Under the new enactment, an employee has the right to an unpaid, job-protected leave of absence, called COVID-19, if they're unable to work in the following circumstances:

- the employee has been diagnosed with COVID19 and is acting in accordance with the instructions of a medical professional
- the employee is in quarantine or self-isolation pursuant to a provincial order or the guidelines of the BC Centre for Disease Control or pursuant to a federal order or the guidelines of the Public Health Agency of Canada
- the employee is providing care to a child or to a dependent adult
- the employee is outside B.C. and cannot return to the province because of travel or border restrictions
- they are directed not to report to work by their employer due to concerns about their exposure to others.

This last point is particularly significant, in that it indicates that employers now have the statutory right under the ESA to require employees to not report to work where there are concerns about potential COVID-19 exposure.

The duration of this leave is broad and open-ended: an employee is entitled to a leave for as long as they continue to satisfy the eligibility criteria. Also noteworthy is the fact that employers are not allowed to request medical documentation, but can otherwise request the employee to provide “reasonably sufficient proof” that an employee is eligible, and remains eligible, for the leave.

These amendments to the ESA *do not* provide a statutory right *for employers* to place their employees on a leave of absence where they have been ordered by government to shut down, or where they are temporarily economically unviable in light of the COVID-19 pandemic. Employers in such situations must continue to consider the risks inherent with layoffs or forced imposition of leaves of absence.

The leave is retroactive to January 27, 2020, and specific language has been added to address the circumstances of eligible employees who were terminated prior to the enactment of the leave. Employers are required to offer the terminated employee re-employment in the same or a comparable position. The employee’s absence from the workplace until re-employment is further deemed to be leave of absence.

Illness or injury leave

The amendment to the BC Employment Standards Act now provides up to three days of unpaid, job-protected leave each year for employees covered by the Employment Standards Act who can’t work due to personal illness or injury (essentially, unpaid sick days). This change provides British Columbians with job-protection for personal illness or injury similar to other jurisdictions in Canada.

This leave applies to employees who have worked for their employer for at least 90 consecutive days. Under this amendment, employers can request that the employee provide ‘reasonably sufficient proof’ of the illness or injury to necessitate a leave.

BC GOVERNMENT RESPONSE TO COVID-19

The B.C. Government has announced a \$5 billion COVID-19 Action Plan to supplement the Federal Government’s multi-billion dollar package. This includes a new Emergency Benefit for Workers, which amounts to a tax-free \$1,000 payment to British Columbians who receive any of the following federal benefits because of COVID-19: Employment Insurance Benefits, or the new Canada Emergency Response Benefit (CERB), as well as a right for businesses with a payroll of over \$500,000 to defer payment of health tax premiums until September 30, 2020.

WORKSAFE BC GUIDANCE FOR EMPLOYERS

WorkSafeBC issued guidance to employers and employees as to what steps they should be taking in their workplaces in response to the COVID-19 pandemic. We encourage all employers

to review these materials in their entirety <https://www.worksafebc.com/en/about-us/covid-19-updates>

WORK REFUSALS

A reminder that workers in B.C. also have the right to refuse unsafe work if they believe it presents an undue hazard.

The manner in which to respond is going to be highly fact-specific and context-dependant. Broadly speaking, in terms of process, once an employee has indicated that they are refusing to work because they feel that it is unsafe, an employer is obligated to immediately investigate and respond to the matter.

INDUSTRY-SPECIFIC INFORMATION: BC Construction and Mining

Please note that specific guidance for the construction and mining industries have been published. Additional material is available to review here:

- For **construction industry employers**, the Government of B.C. has published Guidance to Construction Sites Operating During COVID-19 <https://news.gov.bc.ca/releases/2020EMBC0002-000542>
- For **mining industry employers**, the Chief Inspector of Mines has also made a series of recommendations regarding COVID-19 <https://news.gov.bc.ca/releases/2020EMPR0014-000516>

ONTARIO AND QUEBEC

Shutdown of non-essential business in Ontario and Quebec

All non-essential businesses in Ontario and non-priority services and activities in Quebec have been shut down since midnight March 24th, 2020. In Ontario, this shut-down is set to last for at least two weeks and in Quebec, at least three weeks.

The following resources provide additional information about businesses considered essential:

- For Ontario: https://www.ontario.ca/page/list-essential-workplaces?_ga=2.109347714.624138554.1585083319-555719221.1585083319
- For Quebec: <https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/essential-services-commercial-activities-covid19/#c48429>

GOVERNMENT OF CANADA: PROPOSED EMERGENCY RESPONSE BENEFIT

To support workers and help businesses keep their employees, the government has proposed legislation to establish the Canada Emergency Response Benefit (CERB). This taxable benefit would provide \$2,000 a month for up to four months for workers who lose their income as a result of the COVID-19 pandemic. The proposed CERB would be a simpler and more accessible combination of the previously announced Emergency Care Benefit and Emergency Support Benefit. The CERB would cover Canadians who:

- have lost their job, are sick, quarantined, or taking care of someone who is sick with COVID-19.
- working parents who must stay home without pay to care for children that are sick or need additional care because of school and daycare closures.
- workers who still have their employment but are not being paid because there is currently not sufficient work and their employer has asked them not to come to work.

The CERB would apply to wage earners and self-employed individuals, including contract workers, who would not otherwise be eligible for Employment Insurance. Canadians who are already receiving EI regular and sickness benefits as of today would continue to receive their benefits and should not apply to the CERB. If their EI benefits end before October 3, 2020, they could apply for the CERB once their EI benefits cease, if they are unable to return to work due to COVID-19.

The Canada Emergency Response Benefit will be accessible through a secure web portal starting in early April. Applicants will also be able to apply via an automated telephone line or via a toll-free number.

Please note that this information bulletin is current to March 25, 2020. As this situation is evolving rapidly, we urge you to remain informed to the greatest extent you can. To understand how the information contained in this bulletin might apply in the context of your particular business or operation, please do not hesitate to contact us.



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